

G.L. c. 164 69H1/2 HYDROPOWER GENERATING FACILITIES

Section 69H1/2. For the purpose of this section, the following words shall, unless the context otherwise requires, have the following meanings:—

“Federal Energy Regulatory Commission”, the federal hydropower licensing and permitting agency or its successor.

“Hydropower generating facility”, any electric or mechanical power generating unit whose power source is water flow and which is not a facility as defined in section sixty-nine G.

“Permitting and licensing agencies”, all agencies, authorities, and departments of the commonwealth, and local conservation commissions, whose approval, order, order of conditions, permit, license, certificate, or permission in any form is required prior to or for construction of a hydropower generating facility, except the secretary of environmental affairs acting under the provisions of sections sixty-two to sixty-two H, inclusive, of chapter thirty and shall include, but not be limited to, the department of environmental protection including the division of water pollution control, the department of environmental management, the department of fish and game, the conservation commission with jurisdiction over the proposed site, the Massachusetts Historical Commission, the department of telecommunications and energy, and any other agency, authority, or department of the commonwealth, county, city or town government, as may be from time to time so designated by the energy facilities siting board.

The board shall coordinate the permitting and licensing of hydropower generating facilities by simplifying requirements for permits and licenses.

Said board after consultation with the permitting and licensing agencies, shall establish a preliminary notification form and other forms to be employed by such agencies for permitting and licensing review of proposed hydropower generating facilities. These forms shall include all information required by the permitting and licensing agencies to make decisions on hydropower projects while minimizing duplication of information required for such agencies and for federal licensing. In order to reduce duplication and burdensome filing requirements the board shall provide whenever practicable that such forms utilize the basic Federal Energy Regulatory Commission application and shall make provisions for developers to respond to state filing requirements by reference to their Federal Energy Regulatory Commission application. No other forms shall be required by these agencies for permitting and licensing review of hydropower generating facilities.

Said board shall provide that developers shall commence the state permitting process and file the preliminary notification form required under such process no later than sixty days after official notice that such hydropower developer has filed for a license or exemption with the Federal Energy Regulatory Commission. Said board may extend this filing time upon a showing of good cause, as said board shall determine.

Prior to the submission of any application to any of the permitting and licensing agencies, the developer of a proposed hydropower generating facility shall file a preliminary notification form with all the permitting and licensing agencies and said board. Such preliminary notification form shall be deemed the first agency application for the purposes of notification under section sixty-two A of chapter thirty. Within thirty

days after publication of the notification forms prescribed by the secretary of environmental affairs under said section sixty-two A, said board and the secretary of environmental affairs shall convene a meeting of the permitting and licensing agencies, all agencies which may provide financial assistance, other interested persons, parties or entities, including federal regulatory agencies, and the developer. At such meeting, the permitting and licensing agencies shall consult with the developer and shall determine the information, data and studies required in addition to the forms specified for compliance with the provisions of the permitting and licensing agencies in resolving disputes between the developer and the permitting and licensing agencies concerning the form, content, level of detail and schedules of such requirements.

At the option of a developer or licensing and permitting agency and upon request to the board, a second meeting of all interested parties including the developer, permitting and licensing agencies, federal regulatory agencies and other interested parties and persons shall be convened for the purposes of reviewing a revised application and forms and other changes made subsequent to the initial meeting. Such second meeting may be held at the project site, at a department of environmental protection regional office, or at the Boston offices of said board or other state agency, whichever shall be deemed most reasonable by said board.

Prior to the submission of any notification form to any and all of the permitting and licensing agencies, the board shall require the project proponent to file a proposed notification form and shall determine whether such notification form is substantially complete in meeting with the various filing requirements of the permitting and licensing agencies asserting jurisdiction over the project. Said board shall make a determination, not later than ten days after receiving such proposed application, whether or not it is

complete. Said board may reject an application which is patently deficient or it may accept it but recommend to the project proponent that supplementary information be included that would improve and expedite the permitting and licensing agencies' review process. Said board shall inform the project proponent in writing of its action within ten days of submission of the proposed application.

All licensing and permitting agencies asserting jurisdiction over the hydropower project shall notify said board when informational requirements have been satisfied. At such time said board shall establish a deadline for all agency action, such deadline to be no later than ninety days after receipt of the appropriate complete forms and any other additional requirements of this section. In the event that a developer has been required to file an environmental impact report pursuant to section sixty-two B of chapter thirty, said board shall set a deadline for agency action no later than ninety days after receipt of such forms or thirty days after issuance of the statement of adequacy of the final environmental impact report, as required by section sixty-two C of said chapter thirty, whichever is later. Prior to either such deadline as the case may be, each of the permitting and licensing agencies shall determine whether or not to issue, approve, or grant any application, permit, license, certificate, or other evidence or approval.

Notwithstanding other provisions of this section, the department of environmental protection shall act on a request for a final order of the department within the time limitations specified in section forty of chapter one hundred and thirty-one.

Any party aggrieved by the action, or failure to act, of the permitting and licensing agencies pursuant to this section may, after exhausting all other administrative remedies, appeal to said board within ten days of final agency action or failure to act.

Failure to exercise such right of appeal shall not be deemed a waiver of the right to judicial appeal of an action or failure to act of the permitting and licensing agencies. Said board shall hold a hearing and may consider jointly all pending appeals and shall issue a written decision and order on such appeals considered within ninety days of the appeal. Such decision shall be based upon the energy needs, cost, and environmental impact, and shall for all purposes, including judicial appeal, be deemed equivalent to final licensing or permitting agency action on the approval, permit, license, certificate or permission which is the subject of the appeal. Any party, who is aggrieved by the decision of said board may seek judicial review in the manner provided by chapter thirty A.

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